

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 89-230-E/G - ORDER NO. 92-413✓
JUNE 12, 1992

IN RE: Investigation of Property Transfers)	ORDER GRANTING
from South Carolina Electric & Gas)	MOTION FOR
Company to SCANA, other SCANA)	PROTECTIVE ORDER,
Affiliates and Non-Affiliated Entities,)	SETTING ORAL
and Allocation of Expenses, Revenues)	ARGUMENTS, AND
and Plant between SCE&G, SCANA, and)	SETTING UP
SCANA Affiliates.)	SEPARATE DOCKETS

This matter comes before the Public Service Commission of South Carolina (the Commission) by way of a Motion filed on behalf of South Carolina Electric and Gas Company (SCE&G or the Company) seeking an Order from the Commission to provide for the cessation of discovery in the instant proceeding and relieving the Company from any obligation to answer or otherwise respond to the outstanding discovery requests recently served and filed in this matter.¹

SCE&G cites as its authority R.103-854 of the Commission's Rules of Practice and Procedure, 26 S.C. Code Ann. (Cum. Supp.

1. The presently outstanding discovery requests consist of the "Thirteenth Set of Interrogatories with Request to Produce of Intervenor John Freeman," dated April 8, 1992; and the Interrogatories of the Consumer Advocate (Set Nos. 7, 8 and 9), dated April 8, 1992, April 9, 1992, and April 13, 1992, respectively (collectively, "the Discovery Requests"). Since the filing of the Motion for Protective Order, the Consumer Advocate and John Freeman have filed additional discovery requests. The Commission's determination herein concerning the Discovery Requests apply to all outstanding discovery.

1991), which states that the South Carolina Rules of Civil Procedure (SCRCP) govern all discovery matters not covered in the Commission's regulations. Rule 26 of the South Carolina Rules of Civil Procedure provides for protective orders under Paragraph (C) "upon Motion by a party or by the person from whom discovery is sought, and for good cause shown, the Court in which the action is pending...may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden by expense, one or more of the following: (1) that the discovery not be had...(4) that certain matters not be inquired into or that the scope of the discovery be limited to certain matters;...."

SCE&G cites to the historical record of this matter. The Commission initiated this proceeding by Order No. 89-378, dated April 12, 1989, which authorized the Commission Staff to undertake a general investigation of the affiliated transactions and certain transfers of real property to which SCE&G was a party. The Commission Staff undertook an extensive review of the Company's books and records and an examination of its historic practices and corporate policies pertaining to the Company's transactions with its affiliates, including SCANA Corporation and the Company's transfers of real property. This investigation involved several data requests being propounded by the Commission Staff and the acquisition of other documents and materials through informal requests by the Commission Staff from the Company. Likewise, the Consumer Advocate and Intervenor Freeman conducted their discovery

and received many documents relating to their requests. The Alliance for Fair Competition also propounded discovery through the means of interrogatories and requests for production of documents.

A preliminary report dated August 14, 1990, was put forth by the Commission Staff and comments were sought from the Company as well as the intervenor parties in this matter. As a result of comments received and meetings held between the Commission Staff and various parties, Staff proposed certain reporting requirements and substantive recommendations in this matter. All parties were provided copies of Staff's proposed reporting requirements and recommendations. After more meetings and comments by the parties, the Commission Staff formalized its final report and recommendations and now has submitted that to the Commission for its consideration. The parties of record were also served with copies of Staff's report.

SCE&G further alleges in support of its Motion that additional discovery requested by Intervenor Consumer Advocate and Freeman is unreasonably cumulative and is plainly unnecessary. After nearly three years, the Commission Staff has completed its exhaustive investigation and examination and has submitted its final report and recommendations to the Commission. According to SCE&G, the parties of record, including the Consumer Advocate and Mr. Freeman, have had ample opportunity to avail themselves of discovery long before this stage of the proceeding and have engaged in considerable discovery previously in this proceeding. SCE&G further alleges that the production of the information sought in

such discovery request will not result in the availability of information or material which will advance any material issue at this stage of the proceeding. According to SCE&G, the Commission Staff's final report and recommendations provide reporting and substantive requirements which address the affiliated transactions and material transfers of real property which comprise the issues in this proceeding. To the extent that the information which the discovery requests describe has any relevance to these issues, the prospective application of the proposed requirements will fully address such issues.

In response, both the Consumer Advocate and Intervenor Freeman filed their Opposition to the Motion for Protective Order, as well as, Requests for Evidentiary Hearings and Motions to Compel, among other things. The Consumer Advocate alleges in its response that an evidentiary hearing should be held on the grounds that when the Commission established the instant Docket, the Commission stated that "the Commission will set up a separate Docket on this matter and an investigation and hearing will be held at a later date." Order No. 89-379, p. 2. The Commission also made a further statement in its notice that "the Commission welcomes any evidence from any interested party concerning these issues and will set this matter for public hearing at a later date." Additionally, the Consumer Advocate raises the issues of certain electric and gas matters which, according to the Consumer Advocate, relate to holding company charges. According to the Consumer Advocate, those matters are currently pending before the State Supreme Court. The

Consumer Advocate also states that by settlement agreement and South Carolina Supreme Court Order, the Consumer Advocate, the Commission and Peoples Natural Gas Company agreed that an investigation could be undertaken concerning the acquisition by SCANA/SCE&G of the Peoples' system.

The Consumer Advocate asserts that due to the pendency of the discovery requests outstanding, the Peoples' gas case settlement order and the potential for disagreement regarding both the Staff's substantive and reporting requirements and questions set forth in the notice, the Consumer Advocate recommends and requests that an evidentiary hearing be held, that discovery be terminated following compliance by SCE&G with the discovery requests pending, that the parties be encouraged to narrow the scope of the evidentiary hearing and that a separate docket and hearing be established to allow reasonable discovery related to the acquisition by SCANA/SCE&G of Peoples Natural Gas Company, as well as, Suburban Propane Company and other companies in subsequent reorganizations undertaken by SCANA related thereto in order to determine the effects, if any, of these acquisitions and reorganizations on any substantive recommendations and reporting requirements that the Commission may adopt in the instant Docket.

As to Intervenor John Freeman's response to the Motion for a Protective Order, the Commission notes that the allegations contained in his response relates primarily to certain real estate transactions between SCE&G and SCRED and from SCRED to a third party. Mr. Freeman's and the Consumer Advocate's discovery

requests go to certain information sought concerning that property transfer. In support of his opposition, Mr. Freeman requests that the Company's Motion be denied; that the Company be compelled to answer the pending discovery requests; a scheduling Order be promulgated covering the wrap-up of this investigation; and an evidentiary hearing be set to inquire into the contested issue of the Company's use of appraisals to support intra-SCANA transactions.

The Commission has considered the Motion filed by SCE&G, as well as the responses filed by the intervenors Consumer Advocate and John P. Freeman. The purpose of this investigation and any reporting requirements and recommendations coming out of this investigation is to hold SCE&G to certain standards relating to its transactions with its affiliate subsidiaries, among other things. There is a need, therefore, for the Commission to expeditiously consider the final report filed by the Commission Staff. However, other issues raised by the Consumer Advocate and Freeman warrant consideration by the Commission, specifically, whether an evidentiary hearing should be held. The Company's Motion for a Protective Order is granted pending the Commission's disposition of the question of whether or not an evidentiary hearing is necessary. The discovery requests in question and any subsequent requests are not required to be answered by SCE&G until the hearing matter is resolved.

Further, as to the request for an evidentiary hearing by both the Consumer Advocate and Intervenor Freeman, the Commission will

provide the parties an opportunity to present oral arguments as to why an evidentiary hearing is or is not necessary. The Commission will hear oral arguments from the parties in this matter concerning the submitted final report of the Commission Staff with its recommendations and reporting requirements, as well as whether or not an evidentiary hearing is required. Other issues which may need to be argued before the Commission may be argued at that time. The parties will be provided notice of the date and time of the oral arguments.

As to the Consumer Advocate's request for an investigation into the acquisition by SCANA/SCE&G of Peoples Natural Gas Company and Suburban Propane Company and other companies in subsequent reorganizations undertaken by SCANA and SCE&G, the Commission is of the opinion that the Consumer Advocate should file a separate request to establish this docket, the reasons therefore, and the relief sought by the Consumer Advocate by the establishment of such a docket.

IT IS THEREFORE ORDERED:

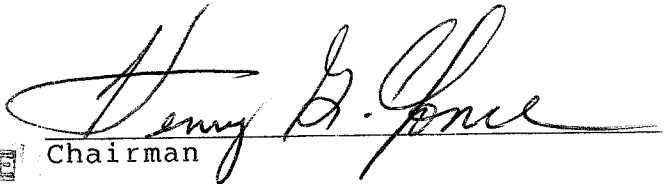
1. That the Motion for Protective Order filed by South Carolina Electric & Gas Company in this matter be granted pending the Commission's determination of the necessity of an evidentiary hearing in this matter.
2. That the Motion for an Evidentiary Hearing filed by the Consumer Advocate and John P. Freeman will be argued orally before the Commission.
3. That the parties will be allowed to present oral

arguments concerning the final report and recommendations submitted by the Commission Staff, the question of whether or not an evidentiary hearing is required and any other issues that may be relevant to this Docket. The parties will be provided notice of the date and time of the oral arguments.

4. That the Consumer Advocate should file a separate action, if it so desires to pursue an investigation into the acquisition by SCANA/SCE&G of Peoples Natural Gas Company and Suburban Propane Company and other companies in subsequent reorganizations undertaken by SCANA and SCE&G fully stating the purpose of the action, the reasons therefore and the relief sought.

5. That this Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


VICE Chairman

ATTEST:


Executive Director

(SEAL)